

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Kyl L. SMITH

Serial No.: 10/519,515

Filed: December 7, 2004

**For: COMPOSITIONS FOR
IMPROVING MENTAL
PERFORMANCE**

Group Art Unit: 1655

Examiner: Michele C. FLOOD

Confirmation No.: 2543

Petition to Revive Unintentionally Abandoned
Application under 37 C.F.R. § 1.137(b)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

1. The applicant hereby petitions for revival of the above-identified application, which apparently became abandoned for failure to file a response to the Office Action mailed June 24, 2009.
2. Reply Under 37 C.F.R. § 1.137(b)(1)

Enclosed herewith is a reply to the Office Action.

3. Fee Under 37 C.F.R. § 1.137(b)(2)

The fee \$810.00 (small entity) under 37 C.F.R. § 1.17(m) is authorized to be charged to our deposit account number 50-2586 and is being paid herewith.

Applicant hereby petitions for the return of this Petition fee on the basis that the abandonment was due to several mail processing errors by the U.S. Patent and Trademark Office. Should this petition be approved, the Commissioner is hereby authorized to return the Petition Fee to the deposit account listed below.

4. Statement Under 37 C.F.R. § 1.137(b)(3)

The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional.

Applicant further asserts that the unintentional abandonment was due to U.S. Patent and Trademark Office error. In support, Applicant asserts that:

i. On July 12, 2005, Applicant filed a declaration and power of attorney naming the law firm Akin Gump Strauss Hauer & Feld LLP, as attorney of record in the above-identified application.

ii. On July 24, 2007, Applicant filed a Revocation and Power of Attorney, naming the law firm Foley & Lardner LLP as attorney of record along with a Response to Restriction Requirement;

iii. On March 20, 2008, the PTO mailed a Notice of Abandonment to the firm Panitch Schwartze Belisario & Nadel LLP. This firm was never counsel of record and does not represent the Applicant in any patent cases.

iii. On May 21, 2008, Applicant's previous patent counsel, Foley & Lardner LLP, filed a Petition and revive the application due to the PTO mailing error.

iv. On February 18, 2009, the PTO granted applicant's petition. The decision on petition however, was again mailed to the firm Panitch Schwartze Belisario & Nadel LLP, which, again, was never counsel of record and does not represent the Applicant in any patent cases.

v. All subsequent correspondence from the PTO to the Applicant, including the Office action mailed June 24, 2009 and the Notice of Abandonment mailed February 1, 2010 have been mailed to the firm Panitch Schwartze Belisario & Nadel LLP, which, again, was never counsel of record and does not represent the Applicant in any patent cases.

vi. Upon learning of the unintentional abandonment, Applicant directed its current patent counsel, Perkins Coie LLP, to prepare this Petition to revive the application.

5. Terminal Disclaimer under 37 C.F.R. § 1.137(b)(4) and (c)

Since this application was filed on or after June 8, 1995, no terminal disclaimer is required.

6. Additional Fees

Please charge any underpayment in fees for timely consideration of this Petition to Deposit Account No. 50-2586.

Respectfully submitted,
Perkins Coie LLP

Date: July 29, 2010

/ Joseph P. HAMILTON /

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